

Cite as Det. No. 05-0059, 24 WTD 430 (2005)

BEFORE THE APPEALS DIVISION  
DEPARTMENT OF REVENUE  
STATE OF WASHINGTON

In the Matter of the Petition For Refund of	)	<u>D E T E R M I N A T I O N</u>
	)	
	)	No. 05-0059
	)	
...	)	Registration No. . . .
	)	Petition for Refund
	)	Docket No. . . .
	)	

RCW 82.08.050: RETAIL SALES TAX -- SELLER'S LIABILITY. A seller who fails to collect retail sales tax is personally liable to the state for the tax. The Department may proceed against the buyer or seller for payment of unpaid sales tax.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Chartoff, A.L.J. – A construction business that failed to collect retail sales tax from a buyer on retail construction services requests that the Department of Revenue (Department) collect the retail sales tax directly from the buyer. We conclude that the Department is not obligated to collect sales tax from a buyer where the seller failed to collect the tax.<sup>1</sup>

ISSUES

Is the Department obligated to collect retail sales tax from the buyer where the seller failed to collect the tax?

FINDINGS OF FACT

The taxpayer, a construction business, was audited for the period of July 1, 2000 through September 30, 2003. The audit resulted in the assessment of \$. . . , which consisted in large part of uncollected retail sales tax (\$. . . ). Audit<sup>2</sup> assessed retail sales tax with respect to construction work the taxpayer performed for . . . (collectively referred to as the buyers) over several years. The taxpayer did not collect the tax from the buyers at the time of the sales because the buyers

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<sup>1</sup> Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

<sup>2</sup> “Audit” refers to the Audit Division of the Department of Revenue.

said they would provide resale certificates. However, the taxpayer was never able to obtain resale certificates from the buyers.

The taxpayer has paid the audit assessment in full, and has hired a lawyer to assist him in collecting the retail sales tax from the buyers. So far, the taxpayer has not been successful in collecting the tax from the buyers. Because the buyers have refused to pay the tax, the taxpayer is asking the Department to help collect the tax from the buyers.

### ANALYSIS

RCW 82.08.050 requires sellers to collect retail sales tax from buyers on retail sales. The statute further provides:

In case any seller fails to collect the tax herein imposed . . . whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer in good faith a properly executed resale certificate under RCW 82.04.470 or a copy of a direct pay permit issued under RCW 82.32.087.

The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller . . . .

The Department, in Excise Tax Advisory 132 (ETA 132), considered whether a seller should be relieved of its collection obligation because the buyer refused to pay the tax. The seller in that case requested to be relieved of its obligation to collect the tax because it was merely a collection agent for the state, and the buyer refused to pay the tax. Under these circumstances, the taxpayer argued that the Department could, in its discretion, proceed directly against the buyer for collection of the tax. The Department held that it would not relieve the seller of its obligation to collect the tax from the buyer because “the best interests of the state require that sellers be held personally liable for the amount of the tax.” The Department concluded that this was the expressed legislative intent of RCW 82.08.050.

Numerous court cases and published determinations have reached the same result. *See, e.g., Morrison-Knudsen Co. v. Department of Rev.*, 6 Wn. App. 306, 312 (1972) (“The seller can be made to remit the tax whether or not he has collected it and whether or not his failure to collect is attributable to his own fault.”); Det. No. 93-159, 13 WTD 316 (1993) (“RCW 82.08.050 authorizes the Department to proceed against the seller as well as the buyer.”); Det. No. 93-069, 12 WTD 589 (1993) (“RCW 82.08.050 requires sellers such as the taxpayer to collect the proper amount of retail sales tax from buyers. It also provides that if sellers fail to collect the tax, they are personally liable.”); Det. No. 89-482, 8 WTD 293 (1989) (The Department held that the seller of a truck who failed to collect sales tax was personally liable to the state for the tax. The Department noted that it was unfortunate that the taxpayer's attempts to collect the tax from the bankrupt buyer had been fruitless, but the Department's claim for the tax against the seller directly “is plainly within the letter of the cited statute.”).

In this case, the taxpayer failed to collect the tax or take a properly executed resale certificate from the buyers. We conclude that Audit was within its authority to proceed against the taxpayer for uncollected retail sales tax in this circumstance. Furthermore, we can find no authority which obligates the Department to proceed directly against the buyer. Accordingly, we must deny the taxpayer's petition for refund.

#### **DECISION AND DISPOSITION**

The taxpayer's petition for refund is denied.

Dated this 17<sup>th</sup> day of March, 2005.